

ROAD SAFE TRAFFIC MANAGEMENT LIMITED - TERMS AND CONDITIONS OF TRADE

1. DEFINITIONS AND INTERPRETATION

- 1.1 "Contract for Service" shall mean the agreement (whether written or verbal) between Road Safe and the Client for the supply of Services.
- 1.2 "Client" shall mean any person or entity that Road Safe carries out Services for and if there is more than one Client then each person or entity is jointly and severally the Client.
- 1.3 "Client's Site" shall mean the site (or sites if applicable) owned, occupied or under the control of the Client which require the Services of Road Safe under the Contract for Service.
- 1.4 "Person" includes a company, partnership, family trust, individual or any other entity.
- 1.5 "Equipment" shall mean any gear, equipment and/or materials owned and used by Road Safe in completing its Services for a Client.
- 1.6 "Services" shall mean the services to be supplied by Road Safe to the Client in satisfying the Contract for Service and may include, without limitation, general traffic management services, site management services, hireage services, training services, traffic management plan design and other traffic related services.
- 1.7 "RCA" shall mean the applicable Road Controlling Authority assigned to administer a Client's job.
- 1.8 "Road Safe" shall mean Road Safe Traffic Management Limited trading as Road Safe Traffic Management, its successors and assigns or any person acting on behalf of and with the authority of Road Safe Traffic Management Limited trading as Road Safe Traffic Management.
- 1.9 Unless the context requires otherwise:
 - 1.9.1 References to any statute, regulations or other statutory instrument or by-law shall be deemed to be references to a statute, regulations, instrument or by-law of New Zealand as from time to time amended and includes substitute provisions (whether in an amendment of existing legislation or in new legislation) that substantially correspond to those referred to;
 - 1.9.2 Where the context requires or admits, words importing the singular shall import the plural and vice versa; and
 - 1.9.3 References to any party includes the successors and any permitted assigns of that party and party means them collectively.

2. ACCEPTANCE OF TERMS AND CONDITIONS OF TRADE

- 2.1 Any instructions received by Road Safe from the Client for Road Safe's Services shall constitute acceptance of these terms and conditions of trade and the terms and conditions of trade shall form part of a binding contract between Road Safe and the Client.
- 2.2 These terms and conditions of trade do not require the Client's signature to be deemed to be binding.
- 2.3 The Client warrants it has the power to enter into a Contract for Service with Road Safe and has obtained all necessary authorisations to do so. The Client further warrants it is not insolvent and accepts the Contract for Service creates binding and valid legal obligations on it.

3. PERSONAL GUARANTEE

- 3.1 Road Safe may require one or more of the representatives of the Client to jointly and severally personally guarantee the Client's obligations under any Contract for Service with Road Safe.

4. QUOTATIONS AND PRICING

- 4.1 Where a quotation is given by Road Safe for its Services then:
 - 4.1.1 Unless otherwise agreed the quotation shall be valid for 30 days from the date of issue;
 - 4.1.2 Unless expressed otherwise the quotation shall be exclusive of:
 - (a) Goods and services tax;
 - (b) RCA fees and/or charges; and
 - (c) Reinstatement of ground surfaces at the Client's Site.
 - 4.1.3 Where the quotation is based on information and hours specified by the Client, Road Safe reserves the right to alter the quotation if there is a variation to this information and/or the hours;

- 4.1.4 Road Safe reserves the right to alter the quotation if the cost of supply of the Services increases beyond the control of Road Safe between the date of the quotation and the completion of the Services; and
- 4.1.5 The Client agrees to pay for the cost of any additional Services required over and above the Services included in the quotation.
- 4.2 Where a quotation is not provided by Road Safe then:
 - 4.2.1 The Services shall be deemed to be provided at the amount specified by Road Safe and shall be exclusive of goods and services tax, RCA fees and/or charges and the cost of reinstatement of ground surfaces at the Client's Site; and
 - 4.2.2 Road Safe's pricing will be based on hourly and day rates for its employees, contractors and Equipment used in providing the Services. Any variations required by the RCA will be additional charges.
- 4.3 Road Safe's Equipment hire is charged from the time the Equipment leaves Road Safe's yard until it is returned to the yard. Should Road Safe be required to collect its Equipment from the Client's Site then Road Safe shall be permitted to charge a collection fee to the Client.
- 4.4 Should the Client leave Road Safe's Equipment unattended at the Client's Site then Road Safe shall be permitted to charge an unattended gear fee to the Client.
- 4.5 In terms of Road Safe's training services:
 - 4.5.1 Road Safe reserves the right to reschedule or cancel its training services without prior notice however it will take reasonable steps to notify the Client of the rescheduling or cancellation;
 - 4.5.2 In the event Road Safe cancels a training service it shall refund any fees paid by the Client for the cancelled training service;
 - 4.5.3 The Client shall be permitted to cancel its registration for a training service by giving written notice to Road Safe. Should the Client cancel its registration within 48 hours of the scheduled training service, the Client shall be liable for a cancellation fee equivalent to 25% of the cost of the training service per individual; and
 - 4.5.4 Refunds will not be provided for persons who fail to attend and the Client will be liable for the full costs of the training service unless otherwise agreed in writing by Road Safe.
- 4.6 Road Safe shall be permitted to charge the Client any Public Holiday rates it incurs in providing the Services;
- 4.7 Road Safe may request the Client to make payment up front or to pay a deposit.

5. SITE ACCESS AND RISK

- 5.1 The Client shall ensure that Road Safe has clear and unimpeded access to the Client's Site to complete its Services.
- 5.2 Any Services undertaken by Road Safe at the Client's Site are performed solely at the Client's risk and Road Safe shall not be liable for any loss or damage to property at the Client's Site regardless of whether the property is owned by the Client.
- 5.3 Road Safe may maintain its own public liability insurance until its Services are completed. Notwithstanding this the Client is responsible for maintaining its own insurance at all times.

6. PROTECTION OF EQUIPMENT

- 6.1 If Road Safe leaves Equipment at the Client's Site in performing its Services and all or some of the Equipment is stolen, lost, damaged or destroyed then any costs incurred in the cleaning, maintaining or replacing the Equipment (as applicable) shall be at the Client's expense. Any replacement of Equipment is to be undertaken on a like-for-like basis.

7. NOTIFICATION OF DAMAGE AND DEFECTS TO EQUIPMENT UPON RECEIPT

- 7.1 The Client shall notify Road Safe in writing of any alleged damage or defect in Road Safe's Equipment ("the Notification") within two (2) working days of delivery of the Equipment to the Client's Site. The Client shall then provide Road Safe with an opportunity to inspect the Equipment at the Client's Site within a reasonable time following Road Safe's receipt of the Client's Notification. If the Client fails to comply with these provisions the Equipment shall be deemed to be accepted by the Client as being free from damage or defect.
- 7.3 If the Client's Notification was received within the time period in clause 7.1 and, following inspection, Road Safe accepts the Client's Notification, Road Safe warrants that it will replace (if necessary) or make good any Equipment with the accepted damage or defect. If replacement or making good of the Equipment is unnecessary, Road Safe warrants that it will not hold the Client liable for the accepted damage or defect. Road Safe shall not accept a claim under this warranty if the Equipment has been modified or incorrectly maintained or used.

8. ACCURACY OF INFORMATION FROM CLIENT

- 8.1 Road Safe shall be entitled to rely on any information provided by the Client in relation to the provision of Services including, without limitation, timeframes, measurements, quantities, plans, specifications and the location of underground services.
- 8.2 Road Safe shall not be liable for any loss, damages, costs and/or expenses incurred as a result of the provision of inaccurate information by the Client.

9. PAYMENT

- 9.1 Unless otherwise specified payment for Road Safe's Services is due on the 20th of the month following the invoice.
- 9.2 Part payment of an account shall not amount to satisfaction of the whole account unless, prior to the act of making the part payment, Road Safe agrees in writing that part payment will be accepted in full satisfaction of the account.

10. DEFAULT

- 10.1 Road Safe may charge penalty interest at a rate of 10% per month on any amount outstanding 12 days after the date payment was due under clause 9.1. Penalty interest is payable from the date payment was due until the date payment is received by Road Safe. This clause is without prejudice to any other rights and/or remedies of Road Safe in respect of the Client's default.
- 10.2 In the event that a payment is not made by the due date Road Safe may, in its sole discretion, suspend the completion of any Services for the Client but failure to do so shall not negate any other rights and/or remedies of Road Safe. Road Safe will not be liable to the Client for any loss or damage the Client suffers if Road Safe suspends its Services under this clause.
- 10.3 Should the Client default in payment or be placed in receivership, liquidation, declared bankrupt, or otherwise become insolvent, then in addition to any other rights and/or remedies of Road Safe, it may demand immediate payment of all amounts then unpaid and cancel the completion of any existing Contract for Service with the Client.
- 10.4 Any costs and expenses incurred by Road Safe in enforcing its rights under these terms and conditions of trade, including debt collection agency fees and legal fees as between solicitor and client, shall be recoverable from the Client.
- 10.5 The Client indemnifies Road Safe from and against all costs and disbursements incurred by Road Safe in recovering any money owing to it.

11. SET OFF

- 11.1 Road Safe may, in its sole discretion, allocate any payment received from the Client towards any invoice that Road Safe determines and may do so at the time of receipt or at any time afterwards and on default by the Client may reallocate any payments previously received and allocated.

12. RETENTION OF TITLE

- 12.1 Ownership and legal title in any of Road Safe's Equipment located at the Client's Site shall remain the ownership of Road Safe regardless of whether it is attached, fixed, inseparable or indistinguishable from other equipment at the Client's Site.
- 12.2 If the Client is in default under its Contract for Service, Road Safe shall be entitled to remove, from the Client's Site, any Equipment it has supplied and the Client authorises Road Safe to enter upon the Client's Site at any time to recover the Equipment pursuant to this clause.

13. PERSONAL PROPERTY SECURITIES ACT 1999

- 13.1 In entering the Contract for Service the Client acknowledges and agrees that the Contract for Service creates a security agreement between Road Safe and the Client for the purposes of the Personal Property Securities Act.
- 13.2 The Client acknowledges and agrees that Road Safe has a security interest in the Equipment it hires to the Client which may be temporarily located at the Client's Site.
- 13.3 Road Safe may protect its interests by registering and maintaining a financing statement(s) on the Personal Properties Securities Register. The Client waives its right to receive a copy of any verification statement received by Road Safe.
- 13.4 The Client undertakes to sign any documents and/or provide further information, such information to be complete, accurate and up-to-date in all respects, which Road Safe may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register.

14. CANCELLATIONS

- 14.1 The Client shall be permitted to cancel the Services to be provided by Road Safe under the Contract for Service (with the exception of training services which are provided for in clause 4.5) up to 12 hours before the Services are scheduled to commence.
- 14.2 If the Client provides notice of cancellation within 12 hours of the time the Services are scheduled to commence then Road Safe shall be permitted to charge four (4) hours of time for every staff member who would have been involved in the Services but for the cancellation.

15. LIMITATION OF LIABILITY

- 15.1 Road Safe shall not be liable for any loss of profit or indirect and/or consequential loss (whether arising under statute, contract, negligence or otherwise) arising out of the Contract for Service.
- 15.2 In the event that Road Safe is found liable for loss for Services provided under the Contract for Service, Road Safe's liability shall not exceed the price of the Services provided under the Contract for Service.

16. MANUFACTURER WARRANTY

- 16.1 Road Safe shall not be bound by any term, condition, representation or warranty given by the manufacturer of any Equipment used by Road Safe.

17. PRIVACY ACT 1993

- 17.1 The Client authorises Road Safe to collect, retain and use any information about the Client for the purpose of assessing the Client's credit worthiness, enforcing any rights under the Contract for Service and marketing its Services.
- 17.2 The Client authorises Road Safe to disclose any information obtained to any person for the purposes set out in clause 17.1.
- 17.3 Where the Client is a natural person the authorities under clauses 17.1 and 17.2 are authorities or consents for the purposes of the Privacy Act 1993.
- 17.4 The Client shall have the right to request a copy of the information held by Road Safe about the Client and the right to request Road Safe to correct any incorrect information about the Client.

18. CONSUMERS GUARANTEES ACT 1993

- 18.1 The parties agree the Services provided under this Contract for Service are provided in trade and they contract out of the provisions of the Consumer Guarantees Act 1993.

19. COMPLIANCE WITH LAWS

- 19.1 Road Safe will comply with any laws, regulations, bylaws, rules and standards that are applicable to the Services it provides to the Client including but not limited to the Health and Safety at Work Act 2015, the Code of Practice for Temporary Traffic Management and the Construction Contracts Act 2002.
- 19.2 The Client acknowledges and accepts that Road Safe's obligations under clause 19.1 may cause an increase in the cost of Road Safe's Services. Should this occur Road Safe will notify the Client of the increase in cost and its cause and shall add the cost increase to the Client's invoice.

20. HEALTH AND SAFETY

- 20.1 The Client is responsible for undertaking its own health and safety policies, procedures and program at the Client's Site.
- 20.2 The Client acknowledges and accepts Road Safe has its own health and safety policies and the Client warrants that it will review these before Road Safe undertakes Services for the Client. The Client further warrants that it will, at all times, comply with Road Safe's health and safety policies and take all practicable steps to uphold these. The Client indemnifies Road Safe from and against any fines or penalties Road Safe incurs as a result of the Client, or any Person the Client employs or contracts with, failing to comply with Road Safe's health and safety policies.
- 20.3 The Client warrants that it will ensure that only authorised people have access to the Client's Site while Road Safe is undertaking its Services and that any authorised people will be supervised during this period of access.

21. CONSTRUCTION CONTRACTS ACT 2002

- 21.1 Where the Construction Contracts Act 2002 ("the Act") applies to the Contract for Service between the Client and Road Safe then the Client agrees:
- 21.1.1 The Contract for Service the Client includes express terms for payment by the Client as permitted by section 14 of the Act;

- 21.1.2 Should the Client dispute an invoice issued by Road Safe (also known as a payment claim under the Act) it shall provide Road Safe with a payment schedule in accordance with section 21 of the Act within 10 working days of receipt of the invoice/payment claim;
- 21.1.3 Road Safe shall be permitted to suspend its Services in accordance with section 24A of the Act.

22. FORCE MAJEURE

- 22.1 Road Safe shall not be liable for any default under the Contract for Service due to any act of God, terrorism, war, strike, lock out, industrial action, flood, storm or other event beyond its reasonable control.

23. MISCELLANEOUS

- 23.1 Road Safe shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.
- 23.2 No waiver by Road Safe in respect of any breach of the Contract for Service shall operate as a waiver in respect of any subsequent breach.
- 23.3 If any clause(s) of these terms and conditions of trade shall be declared invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining clauses shall not be affected, prejudiced or impaired.
- 23.4 Road Safe reserves the right to amend these terms and conditions of trade at any time. Any amendment will be incorporated into any existing Contract for Service and take effect from the date on which Road Safe notifies the Client of such change. The Client will be deemed to have accepted such amendment if the Client makes a further request to Road Safe to provide Services.
- 23.5 These terms and conditions of trade are governed by and construed in accordance with the laws of New Zealand and the parties agree to submit to the exclusive jurisdiction of the courts of New Zealand.
- 23.6 Road Safe may licence or sub-contract all or any part of its Services under the Contract for Service without requiring or seeking the Client's consent.